

1-1 By: Seliger S.B. No. 545
1-2 (In the Senate - Filed February 7, 2011; February 17, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 14, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 14, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 545 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to employment records for law enforcement officers,
1-11 including procedures to correct employment termination reports;
1-12 providing an administrative penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsections (a) and (d), Section 1701.452,
1-15 Occupations Code, are amended to read as follows:

1-16 (a) The head of a law enforcement agency or the head's
1-17 designee shall submit a report to the commission on a form
1-18 prescribed by the commission regarding a person licensed under this
1-19 chapter who resigns or retires from employment with the law
1-20 enforcement agency, whose appointment with the law enforcement
1-21 agency is terminated, or who separates from the law enforcement
1-22 agency for any other reason. The report must be submitted by the
1-23 head or the designee not later than the seventh business day after
1-24 the date the license holder:

1-25 (1) resigns, retires, is terminated, or separates from
1-26 the agency; and ~~or~~

1-27 (2) exhausts all administrative appeals available to
1-28 the license holder, if applicable ~~[if the license holder was~~
1-29 ~~terminated based on an allegation of misconduct]~~.

1-30 (d) The head of the law enforcement agency from which a
1-31 license holder resigns, retires, is terminated, or separates for
1-32 reasons other than death, or the head's designee, shall provide to
1-33 the license holder a copy of the report. The report must be
1-34 provided to the license holder not later than the seventh business
1-35 day after the date the license holder:

1-36 (1) resigns, retires, is terminated, or separates from
1-37 the agency; and ~~or~~

1-38 (2) exhausts all administrative appeals available to
1-39 the license holder, if applicable ~~[if the license holder was~~
1-40 ~~terminated based on an allegation of misconduct]~~.

1-41 SECTION 2. The heading to Section 1701.4525, Occupations
1-42 Code, is amended to read as follows:

1-43 Sec. 1701.4525. PETITION ~~[REQUEST]~~ FOR CORRECTION OF
1-44 REPORT; HEARING; ADMINISTRATIVE PENALTY ~~[, HEARING, APPEAL]~~.

1-45 SECTION 3. Section 1701.4525, Occupations Code, is amended
1-46 by amending Subsections (a), (d), and (e) and adding Subsection
1-47 (e-1) to read as follows:

1-48 (a) A person who is the subject of an employment termination
1-49 report maintained by the commission under this subchapter may
1-50 contest information contained in the report by submitting to the
1-51 law enforcement agency and to the commission a written petition on a
1-52 form prescribed by the commission ~~[request]~~ for a correction of the
1-53 report ~~[and any evidence contesting the information contained in~~
1-54 ~~the report]~~ not later than the 30th day after the date the person
1-55 receives a copy of the report. On receipt of the petition, the
1-56 commission shall refer the petition to the State Office of
1-57 Administrative Hearings ~~[The commission shall allow the head of the~~
1-58 ~~law enforcement agency to submit to the commission any evidence~~
1-59 ~~rebutting the evidence submitted by the person who is the subject of~~
1-60 ~~the report]~~.

1-61 (d) A proceeding ~~[under Subsection (b)]~~ to contest
1-62 information in ~~[the commission's order or under Subsection (c) to~~
1-63 ~~correct]~~ an employment termination report is a contested case under

2-1 Chapter 2001, Government Code.
2-2 (e) In a proceeding [~~under Subsection (b)~~] to contest
2-3 information in [the commission's order or under Subsection (c) to
2-4 ~~correct]~~ an employment termination report for a [~~an order or~~]
2-5 report based on alleged misconduct, an administrative law judge
2-6 shall determine if the alleged misconduct occurred by a
2-7 preponderance of the evidence regardless of whether the person who
2-8 is the subject of the report was terminated or the person resigned,
2-9 retired, or separated in lieu of termination. If the alleged
2-10 misconduct is not supported by a preponderance of the evidence, the
2-11 administrative law judge shall order the report to be changed.

2-12 (e-1) The commission may assess an administrative penalty
2-13 against an agency head who fails to make a correction to an
2-14 employment termination report following an order by the State
2-15 Office of Administrative Hearings after all appeals available to
2-16 the agency head have been exhausted.

2-17 SECTION 4. Section 1701.454, Occupations Code, is amended
2-18 to read as follows:

2-19 Sec. 1701.454. CONFIDENTIALITY. (a) All information [A
2-20 ~~report or statement]~~ submitted to the commission under this
2-21 subchapter is confidential and is not subject to disclosure under
2-22 Chapter 552, Government Code, unless the person resigned or was
2-23 terminated due to substantiated incidents of excessive force or
2-24 violations of the law other than traffic offenses.

2-25 (b) Except as provided by this subchapter, a commission
2-26 member or other person may not release information [the contents of
2-27 ~~a report or statement]~~ submitted under this subchapter.

2-28 SECTION 5. Section 1701.455, Occupations Code, is amended
2-29 to read as follows:

2-30 Sec. 1701.455. SUBPOENA. Information [A report or
2-31 ~~statement]~~ submitted to the commission under this subchapter is
2-32 subject to subpoena only in a judicial proceeding.

2-33 SECTION 6. Subsections (b) and (c), Section 1701.4525,
2-34 Occupations Code, are repealed.

2-35 SECTION 7. (a) The changes in law made by this Act to
2-36 Section 1701.452, Occupations Code, apply only to a license holder
2-37 who resigns, retires, is terminated, or separates from a law
2-38 enforcement agency on or after the effective date of this Act. A
2-39 license holder who resigns, retires, is terminated, or separates
2-40 from a law enforcement agency before the effective date of this Act
2-41 is governed by the law in effect on the date of the resignation,
2-42 retirement, termination, or separation, and the former law is
2-43 continued in effect for that purpose.

2-44 (b) The changes in law made by this Act to Section
2-45 1701.4525, Occupations Code, apply only to a petition for a
2-46 correction of an employment termination report submitted on or
2-47 after the effective date of this Act. A request submitted before
2-48 the effective date of this Act is governed by the law in effect on
2-49 the date the request was submitted, and the former law is continued
2-50 in effect for that purpose.

2-51 SECTION 8. This Act takes effect September 1, 2011.

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